

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Donald McCauley

Social Security No.: xxx-xx-7484

Address:

101 Planters Creek Drive, Myrtle Beach, SC 29579-

Case No. 09-81025- -

Chapter 13

Debtor

OBJECTION TO CLAIM

NOW COMES the Debtor above-named, through counsel, who respectfully object to the proof of claim #5 filed by the creditor American Express Bank, FSB (hereinafter referred to as "American Express") and dated July 21, 2009, for the following reasons:

1. The Proof of Claim filed by American Express, does not, in contravention of Federal Bankruptcy Rule 3001(c), include a copy of the writing upon which is based or a statement of the circumstances under which such writing was lost or destroyed.
2. Accordingly, pursuant to In re Andrews, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008), this claim should not be considered presumptively valid.
3. Further, pursuant to In re Forrest, Case No. 06-01967-8-RDD (Bankr. E.D.N.C. May 22, 2009) and Unifund CCR Partners v Dover, 681 S.E.2d 565, 2009 WL 2180672 (N.C.App. July 21, 2009) the Proof of Claim does not satisfy the requirements for an account stated, namely that the Proof of Claim does not include an "itemization of credit extended to cover individual transactions." Id.
4. Further, the Proof of Claim contains no verification that either American Express or Thomas A. Lee, III, who prepared this Proof of Claim is "in any way connected to the establishment or maintenance of the alleged credit card account..." Id.

WHEREFORE, the Debtor prays that that the Court enter an Order disallowing the claim in its entirety and that the Court preclude American Express from amending its claim without first seeking leave to do so.

Dated: May 12, 2010

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

North Carolina State Bar No.: 23003

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CERTIFICATE OF SERVICE

I, Ed Boltz, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on May 12, 2010. I served copies of the foregoing **OBJECTION TO CLAIM** by certified mail, return receipt requested addressed to the following parties:

American Express Bank FSB

Attn: Managing Agent

Becket & Lee, L.L.P.

Post Office Box 3001

Malvern PA 19355-0701

and by automatic electronic noticing upon the following Trustee:

Richard M. Hutson, II

Chapter 13 Trustee

/s Ed Boltz

Ed Boltz